# MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Conference Room 308 Phoenix, Arizona 85007 Thursday, October 5, 2017 – 1:00 p.m.

Present:

Dale L. Schultz

Chairman

Joseph M. Hennelly, Jr.

Vice Chair

Scott P. LeMarr Robin S. Orchard Commissioner Commissioner

Steven J. Krenzel

Commissioner

James Ashley

Director

THE REPORT

Jason M. Porter

Chief Legal Counsel

Trevor Laky

Legislative Affairs Chief / Public Information Officer

Sylvia Simpson

Chief Financial Officer

Renee Pastor William Warren Self Insurance ADOSH Director

Phillip Murphy

Assistant ADOSH Director

Kara Dimas

Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Keith Shay with Hawkeye Electric, Inc.; James Murphy and Cody Phela with Willmeng Construction, Inc.; Christopher J. Knueven and William Burke with Miller-Valentine for MV Commercial Construction LLC; Charles Keller with Snell & Wilmer representing Sprayfoam Southwest, Inc.; RJ and Rick Radobenko with Sprayfoam Southwest, Inc.; Rich Wilson, Nancy Wilson, and Michele Gryniewicz with Trademark Construction Co., Inc.; Robert Scoglio with OSHA; and Jessica Aceves with Snell & Wilmer.

# Approval of Minutes of September 21, 2017 Regular Meeting.

Commissioner Orchard moved to approve the Minutes of the September 21, 2017 regular meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. Commissioner LeMarr abstained. The motion passed.

### Consent Agenda:

147 .

4-9-20

8 14 18 5 26

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

# a. <u>Approval of Proposed Civil Penalties Against Uninsured Employers.</u>

- 1. 2C16/17-2100
- Orenccios Tucson LLC, dba Orenccios Ristorante-Terrazza
- 2. 2C15/16-1645
- Royal Shuttle LLC

- b. Approval of Requests for Renewal of Self-Insurance Authority.
  - 1. DG Retail, LLC
  - 2. Parker-Hannifin Corporation

Commissioner LeMarr moved to approve the items on the Consent Agenda and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

# <u>Discussion and Action of Application for Self-Insurance Authority</u>.

1. Trademark Construction Co., Inc.

Chairman Schultz asked Mr. Wilson, Ms. Wilson, and Ms. Gryniewicz if they would like to make any comments. Mr. Wilson thanked Ms. Pastor for working with them and introduced Ms. Gryniewicz.

Chairman Schultz thanked Trademark Construction for joining the meeting and noted his understanding that the company was considering entering the VPP program.

Ms. Gryniewicz discussed a Yuma company that will act as Trademark Construction's VPP mentor and related her hope that Trademark Construction will have the opportunity to mentor another company.

Chairman Schultz discussed a Commission visit to Yuma that focused on workplace safety in the agricultural industry. He indicated that he looked forward to visiting with Trademark Construction in Yuma. He discussed Commission partnerships with roofing contractors, stucco contractors, the Arizona Home Builders Association, the Sub-Contractors Association and an alliance with the Arizona State University Del Webb School of Construction.

Commissioner LeMarr moved to approve self-insurance authority to Trademark Construction Co., Inc., and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action regarding the Setting of Assessments under A.R.S. §§ 23-961(G), 23-1065(A), and 23-1065(F) for Calendar Year 2018.

Ms. Simpson discussed the Commission's authority to levy assessments pursuant to A.R.S. §§ 23-961(G), 23-1065(A), and 23-1065(F) and the current assessment rates. She then reviewed the staff memorandum and recommendations.

Chairman Schultz explained the purposes for assessments and how they are used.

Ms. Simpson related staff's recommendation that § 23-961(G) assessment rate be decreased from 2.25% (in CY 2017) to 1.75% in CY 2018. Ms. Simpson related staff's recommendation that the Commission continue the §§ 23-1065(A) and 1065(F) assessments at 0% for CY 2018.

Chairman Schultz noted that the current and proposed assessment rates are the lowest they have been in 20 years and that he attributes this to hard work from the Commission's lean principles. He

noted that the Special Fund earned 10.8% on investments for the last fiscal year and about 12.5% during the last calendar year. Chairman Schultz stated that investment performance was one of the reasons he was comfortable with staff recommendations.

Mr. Ashley discussed analysis and findings by the National Council on Compensation Insurance.

Commissioner Orchard moved to approve 1.75% as the CY 2018 assessment rate under § 23-961(G); 0% as the CY 2018 assessment rate under § 23-1065(A); and 0% as the CY 2018 assessment rate under § 23-1065(F). Commissioner LeMarr seconded the motion. Commissioner Orchard complimented the Commission, stating that is an extremely well-run division of Arizona government. Chairman Schultz, Commissioner Krenzel, and Ms. Simpson further discussed the Special Fund's investment performance. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel in favor of the motion. The motion passed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Mr. Warren discussed the connection between the citations and proposed penalties on the meeting Agenda and the safety issues present at the common worksite. He reviewed a schematic of the worksite and identified the general contractors and subcontractors present on the worksite.

Sprayfoam Southwest, Inc. dba Roofing Southwest

2401 E Magnolia St.

Phoenix, AZ 85034

SITE LOCATION:

Inspection No: Inspection Date: Goodyear, AZ 85338

Q6169-1228095

4320 S Cotton Lane

04/20/2017

<u>REPEAT SERIOUS</u> – Citation 1 - Item 1 – 4320 S Cotton Ln., Goodyear, AZ: Six employees doing roofing work were not protected from falling approximately 40 feet to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(10)).

The Sprayfoam Southwest, Inc. dba Roofing Southwest was previously cited for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1926.501(b)(10), which was contained in OSHA inspection number 1193305 citation number 1, item number 1 and was affirmed as a final order on 2/21/2017, with respect to a workplace located at 1640 N Peart Rd, Casa Grande, AZ.

Div. Proposal - \$4,000.00

Formula Amt. - \$4,000.00

Fatality/Accident

Years in Business:

Empl. Covered by inspection:

47

SERIOUS – Citation 2 - Item 1 –

a) 4320 S Cotton Ln., Goodyear, AZ: Six employees working on a roof were not protected from falling through skylights (8 feet 6 inches long x 4 feet 6 inches wide) approximately 40 feet to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(4)(i)).

- b) 4320 S Cotton Ln., Goodyear, AZ: One employee used an anchor attached to their personal fall arrest system that was not designed, installed and used under the supervision of a qualified person. (29 CFR 1926.502(d)(15)(ii)).
- c) 4320 S Cotton Ln., Goodyear, AZ: Six employees working on a roof, with an approximate 40 feet fall hazard, and a covers over a broken skylights were not color coded or marked with the word "HOLE" or "COVER" to provide warning of the hazard. (29 CFR 1926.502(i)(4)). Div. Proposal \$7,000.00 Formula Amt. \$2,000.00

#### SERIOUS – Citation 2 - Item 2 –

- a) 4320 S Cotton Ln., Goodyear, AZ: Six employees working on a roof, with an approximate 40 feet fall hazard, utilized a warning line system in which was not flagged at no more than 6-foot intervals with high-visibility material. (29 CFR 1926.502(f)(2)(i)).
- b) 4320 S Cotton Ln., Goodyear, AZ: Six employees working on a roof, with an approximate 40 feet fall hazard, utilized a warning line system in which was not rigged or supported in such a way that its lowest point (including sag) was not less than 34 inches from the walking/working surface and its highest point no more than 39 inches from the walking/working surface. (29 CFR 1926.502(f)(2)(ii)).
- c) 4320 S Cotton Ln., Goodyear, AZ: Six employees working on a roof, with an approximate 40 feet fall hazard, utilized a warning line system in which was not made from rope, wire or chain having a tensile strength of at least 500 pounds. (29 CFR 1926.502(f)(2)(iv)).
- d) 4320 S Cotton Ln., Goodyear, AZ: Six employees working on a roof, with an approximate 40 feet fall hazard, utilized a warning line system, that was not attached at each stanchion, in which pulling on one section of the line between stanchions allowed slack being taken up in adjacent sections. (29 CFR 1926.502(f)(2)(v)).

  Div. Proposal \$2,000.00

  Formula Amt. \$2,000.00

#### SERIOUS – Citation 2 - Item 3 –

- a) 4320 S Cotton Ln., Goodyear, AZ: One employee working on a roof at heights greater than 6 feet and exposed to falls was not provided training to recognize the hazards of falling or the procedures to be followed in order to minimize these hazards. (29 CFR 1926.503(a)(1)).
- b) 4320 S Cotton Ln., Goodyear, AZ: Five employees doing construction related activities above 6 feet to the next lower level were not trained in accordance with the requirements of 29 CFR 1926.503 in that documentation of that training was not maintained. (29 CFR 1926.503(b)(1)).
- c) 4320 S Cotton Ln., Goodyear, AZ: One employees doing construction related activities above 6 feet to the next lower level who already had been trained but demonstrated an inadequate understanding of the skills required by paragraph (a) of this section was not retrained. (29 CFR 1926.503(c)(3)).

Div. Proposal - \$7,000.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$15,000.00

TOTAL FORMULA AMT. - \$10,000.00

Mr. Warren discussed ADOSH's fatality investigation, summarized the citations and proposed penalties as listed, and discussed the photographs and history.

Commissioner Orchard, Mr. Warren, Chairman Schultz, and Mr. Murphy discussed the subject building and a prior citation that involved the building.

Commissioner Orchard and Mr. Warren discussed the bases for, and differences between, the citations. Chairman Schultz and Mr. Warren discussed the purpose for labeling covered broken skylights.

Mr. Keller noted that, given the admonition, he did not have a lot to say and reserved the employer's right to contest the citations and proposed penalties. He noted one issue that Mr. Radobenko would like to discuss.

Mr. Radobenko discussed his concerns with being labeled a "repeat" offender, including his recollection of a prior conversation with Gilbert Bracamonte. Mr. Warren stated that he was unaware of the referenced conversation, discussed the basis for issuing a repeat violation, and reviewed the history of the prior violations.

Mr. Keller discussed ADOSH's interpretation of the flagging standards and raised concerns about outreach concerning this issue. He recommended that ADOSH engage in better outreach concerning the issue. He suggested that the grouped violations in Citation 2, Item 2 be reduced to a single violation.

Chairman Schultz thanked Mr. Keller for his comments and discussed the distinction between a warning line and a fall protection system that is required to hold weight.

Chairman Schultz, Mr. Keller, Mr. Warren discussed the distinction between visual and physical barriers, and the nature of fall protection violations. Chairman Schultz noted that additional discussions can occur during the formal settlement and hearing process.

Commissioner Krenzel moved to approve the citations and proposed penalties as presented and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Unprogrammed Related

Empl. Covered by inspection:

64

6

Years in Business:

Comfort Systems USA (Southwest), Inc.

6875 W Galveston St. Chandler, AZ 85226

Site Location: 4320

4320 S Cotton Lane

Goodyear, AZ 85338

Inspection No: Inspection Date:

Q6169-1235032

04/26/2017

SERIOUS – Citation 1 - Item 1 –

a) 4320 S Cotton Ln., Goodyear, AZ: Six employees doing HVAC work on a roof, were not protected from falling through skylights (8 feet 6 inches long x 4 feet 6 inches wide) approximately 40 feet to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(4)(i)).

- b) 4320 S Cotton Ln., Goodyear, AZ: Two employees operating scissor lifts were not protected from objects or employees falling through skylights. (29 CFR 1926.501(b)(4)(iii)).
- c) 4320 S Cotton Ln., Goodyear, AZ: One employee performed HVAC work on a roof, with an approximate 40 feet fall hazard, in the area between the roof edge and the warning line. (29 CFR 1926.502(f)(3)).
- d) 4320 S Cotton Ln., Goodyear, AZ: Six employees doing HVAC work on a roof, with an approximate 40 feet fall hazard, with a cover over a broken skylight that was not color coded or marked with the word "HOLE" or "COVER" to provide warning of the hazard. (29 CFR 1926.502(i)(4)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

# SERIOUS - Citation 1 - Item 2 -

- a) 4320 S Cotton Ln., Goodyear, AZ: Six employees doing HVAC work on a roof, with an approximate 40 feet fall hazard, utilized a warning line system in which was not flagged at no more than 6-foot intervals with high-visibility material. (29 CFR 1926.502(f)(2)(i)).
- b) 4320 S Cotton Ln., Goodyear, AZ: Six employees doing HVAC work on a roof, with an approximate 40 feet fall hazard, utilized a warning line system in which was not rigged or supported in such a way that its lowest point (including sag) was not less than 34 inches from the walking/working surface and its highest point no more than 39 inches from the walking/working surface. (29 CFR 1926.502(f)(2)(ii)).
- c) 4320 S Cotton Ln., Goodyear, AZ: Six employees doing HVAC work on a roof, with an approximate 40 feet fall hazard, utilized a warning line system in which was not made from rope, wire or chain having a tensile strength of at least 500 pounds. (29 CFR 1926.502(f)(2)(iv)).
- d) 4320 S Cotton Ln., Goodyear, AZ: Six employees doing HVAC work on a roof, with an approximate 40 feet fall hazard, utilized a warning line system, that was not attached at each stanchion, in which pulling on one section of the line between stanchions allowed slack being taken up in adjacent sections. (29 CFR 1926.502(f)(2)(v)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

<u>SERIOUS</u> – Citation 1 - Item 3 – 4320 S Cotton Ln., Goodyear, AZ: Two employees working at heights greater than 6 feet and exposed to falls were not provided training to recognize the hazards of falling or the procedures to be followed in order to minimize these hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$6,750.00

TOTAL FORMULA AMT. - \$6,750.00

Mr. Warren summarized the citation and proposed penalties, and reviewed the photographs.

Vice Chair Hennelly, Commissioner Krenzel, and Mr. Warren discussed the various employers' responsibility for abating the hazards, the employers' roles on the worksite, and the employers' roles in exposing employees to hazards.

Chairman Schultz and Mr. Warren discussed Photographs 5 and 6, noting that they depicted protection over the skylights after the fatality.

Commissioner Orchard moved to approve the citation and proposed penalties as presented and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Hawkeye Electric, Inc.

Unprogrammed Related

10 S Roosevelt Ave.

Years in Business: 17

12

Chandler, AZ 85226

Empl. Covered by inspection:

Site Location:

4320 S Cotton Lane

Goodyear, AZ 85338

Inspection No:

Q6169-1234724

Inspection Date:

04/26/2017

<u>SERIOUS</u> – Citation 1 - Item 1 – 4320 S Cotton Ln., Goodyear, AZ: Six employees doing electrical work on a roof, were not protected from falling through skylights (8 feet 6 inches long x 4 feet 6 inches wide) approximately 40 feet to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(4)(i)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

#### SERIOUS – Citation 1 - Item 2 –

- a) 4320 S Cotton Ln., Goodyear, AZ: Six employees doing electrical work on a roof, with an approximate 40 feet fall hazard, utilized a warning line system in which was not flagged at no more than 6-foot intervals with high-visibility material. (29 CFR 1926.502(f)(2)(i)).
- b) 4320 S Cotton Ln., Goodyear, AZ: Six employees doing electrical work on a roof, with an approximate 40 feet fall hazard, utilized a warning line system in which was not rigged or supported in such a way that its lowest point (including sag) was not less than 34 inches from the walking/working surface and its highest point no more than 39 inches from the walking/working surface. (29 CFR 1926.502(f)(2)(ii)).
- c) 4320 S Cotton Ln., Goodyear, AZ: Six employees doing electrical work on a roof, with an approximate 40 feet fall hazard, utilized a warning line system in which was not made from rope, wire or chain having a tensile strength of at least 500 pounds. (29 CFR 1926.502(f)(2)(iv)).
- d) 4320 S Cotton Ln., Goodyear, AZ: Six employees doing electrical work on a roof, with an approximate 40 feet fall hazard, utilized a warning line system, that was not attached at each stanchion, in which pulling on one section of the line between stanchions allowed slack being taken up in adjacent sections. (29 CFR 1926.502(f)(2)(v)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$4,000.00

TOTAL FORMULA AMT. - \$4,000.00

Mr. Warren summarized the citation and proposed penalties.

Mr. Shay discussed the applicability of the warning-line violation, the company's attempts to change its safety culture, the employee's decision to go against company policy, and company-wide

fall protection re-certification. He noted that the company is attempting to partner with a general contractor to go through the VPP process and discussed the company's engagement with the ADOSH Consultation Division. He acknowledged that he was on the roof, saw the warning line system, and did not pull company employees off of the roof as he should have. He stated that, at the time, he did not think they were in violation. He stated that he has since taken additional OSHA classes.

Vice Chair Hennelly moved to approve the citation and proposed penalties as presented and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Chairman Schultz thanked Mr. Shay for his efforts and noted that he looked forward to his company's application for VPP.

MV Commercial Construction LLC

9349 Waterstone Blvd

Cincinnati, OH 45249

Site Location:

4320 S Cotton Lane

Goodyear, AZ 85338

Inspection No:

Q6169-1234688

Inspection Date:

04/20/2017

# SERIOUS – Citation 1 - Item 1 –

- a) 4320 S Cotton Ln., Goodyear, AZ: One employee on a roof, during construction work, was not protected from falling approximately 40 feet to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(1)).
- b) 4320 S Cotton Ln., Goodyear, AZ: One employee and multiple subcontractor employees working on a roof, during construction work, were not protected from falling through skylights (8 feet 6 inches long x 4 feet 6 inches wide) approximately 40 feet to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(4)(i)).
- c) 4320 S Cotton Ln., Goodyear, AZ: One employee and multiple subcontractor employees were not protected from objects or employees falling through skylights. (29 CFR 1926.501(b)(4)(iii)).
- d) 4320 S Cotton Ln., Goodyear, AZ: One employee and multiple subcontractor employees working on a roof, with an approximate 40 feet fall hazard, with covers over a broken skylights that were not color coded or marked with the word "HOLE" or "COVER" to provide warning of the hazard. (29 CFR 1926.502(i)(4)).

Div. Proposal - \$3,500.00

Formula Amt. - \$1,750.00

Unprogrammed Related Years in Business:

Empl. Covered by inspection:

50

2

#### SERIOUS – Citation 1 - Item 2 –

a) 4320 S Cotton Ln., Goodyear, AZ: One employee on a roof, during construction work, was not protected from falling approximately 40 feet to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(1)).

- b) 4320 S Cotton Ln., Goodyear, AZ: One employee and multiple subcontractor employees working on a roof, during construction work, were not protected from falling through skylights (8 feet 6 inches long x 4 feet 6 inches wide) approximately 40 feet to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(4)(i)).
- c) 4320 S Cotton Ln., Goodyear, AZ: One employee and multiple subcontractor employees were not protected from objects or employees falling through skylights. (29 CFR 1926.501(b)(4)(iii)).
- d) 4320 S Cotton Ln., Goodyear, AZ: One employee and multiple subcontractor employees working on a roof, with an approximate 40 feet fall hazard, with covers over a broken skylights that were not color coded or marked with the word "HOLE" or "COVER" to provide warning of the hazard. (29 CFR 1926.502(i)(4)).

Div. Proposal - \$3,500.00

Formula Amt. - \$3,500.00

<u>SERIOUS</u> – Citation 1 - Item 3 – 4320 S Cotton Ln., Goodyear, AZ: One employee on a roof, during construction activities, at heights greater than 6 feet and exposed to falls was not provided training to recognize the hazards of falling or the procedures to be followed in order to minimize these hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$8,750.00

TOTAL FORMULA AMT. - \$7,000.00

Mr. Warren summarized the citation and proposed penalties and reviewed the photographs. He noted that the grouping for Citation 1, Item 1 resulted in a Higher Greater (HG) classification, not the Higher Lesser (HL) mistakenly reflected in the report. He discussed the proposed penalty for Citation 1, Item 1. He indicated that Citation 1, Item 3 needs to be removed, as ADOSH had received proof of training from the employer.

Mr. Knueven noted that Miller-Valentine Construction was acting as a construction manager for the building owner and that it had hired Willmeng Construction, Inc., which hired the subcontractors. He noted that Mr. Burke, the Director of Safety for the project, made regular visits to the worksite and discussed Mr. Burke's accomplishments.

Mr. Burke noted that the company is a new contractor in Arizona, explained the company's background, and discussed its safety record and culture.

Mr. Warren and Mr. Knueven discussed the number of employees employed by MV Commercial.

Commissioner Orchard, Mr. Knueven, and Mr. Burke discussed whether Dan Ritter was MV Construction's employee, whether he took part in safety meetings before the project started, and who was responsible for running worksite safety meetings.

Chairman Schultz, Mr. Warren, and Mr. Murphy discussed the lack of a good faith reduction.

Vice Chair Hennelly, Mr. Warren, and Mr. Porter discussed the Citation 1, Item 1 penalty calculation and discussed adjusting the calculation explanation in the future when grouping HG and HL violations.

Mr. Porter suggested that motions not include Citation 1, Item 3, as that violation had been removed by ADOSH.

Commissioner Orchard discussed amendments needed on the ADOSH report and whether a good faith discount should apply. Mr. Warren noted that the subject company's VPP site was located in Ohio and would not be considered in this matter.

Commissioner Orchard, Mr. Knueven, and Mr. Burke discussed whether the safety hazards at the worksite would have been discovered had the project been located in Ohio. Mr. Knueven discussed the events leading to the fatality.

Mr. Warren and Mr. Murphy noted that this was Mr. Ritter's first project with skylights and discussed ADOSH's observations.

Commissioner Orchard requested that ADOSH review its report, "clean up the paperwork," and resubmit the matter at a subsequent meeting for the Commission's review. Mr. Warren noted that October 20, 2017, is the deadline to issue. Mr. Ashley discussed possible meeting dates at which the matter could be reviewed.

Chairman Schultz and Mr. Porter discussed a motion to remand the matter to ADOSH.

Commissioner LeMarr moved to remand the matter to ADOSH for correction and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Unprogrammed Related

Empl. Covered by inspection:

40

3

Years in Business:

Willmeng Construction, Inc.

2048 N 44<sup>th</sup> St., Ste. 200

Phoenix, AZ 85008

Site Location:

4320 S Cotton Lane

Goodyear, AZ 85338

Inspection No:

Q6169-1229424

Inspection Date:

04/20/2017

SERIOUS - Citation 1 - Item 1 -

# 29 CFR 1926.501(b)(1):

- a) 4320 S Cotton Ln., Goodyear, AZ: Three employees on a roof, during construction work, were not protected from falling approximately 40 feet to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(1)).
- b) 4320 S Cotton Ln., Goodyear, AZ: One employee working on the roof, was not protected from falling approximately 40 feet to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(1)).

# 29 CFR 1926.501(b)(4)(i):

a) 4320 S Cotton Ln., Goodyear, AZ: Three employees and multiple subcontractor employees working on a roof, during construction work, were not protected from falling through skylights (8 feet 6 inches long x 4 feet 6 inches wide) approximately 40 feet to the ground below by the

- (29 CFR use of guardrail systems, safety net systems, or personal fall arrest systems. 1926.501(b)(4)(i)).
- b) 4320 S Cotton Ln., Goodyear, AZ: One employee working on the roof, was not protected from falling through skylights (8 feet 6 inches long x 4 feet 6 inches wide) approximately 40 feet to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(4)(i)).
- c) 4320 S Cotton Ln., Goodyear, AZ: Four employees and multiple subcontractor employees were (29 CFR not protected from objects or employees falling through skylights. 1926.501(b)(4)(iii)).
- d) 4320 S Cotton Ln., Goodyear, AZ: Two employees and multiple subcontractor employees working on a roof, with an approximate 40 feet fall hazard, installed a cover over a broken skylight that was not color coded or marked with the word "HOLE" or "COVER" to provide warning of the hazard. (29 CFR 1926.502(i)(4)).

Div. Proposal - \$7,000.00

Formula Amt. - \$1,500.00

## SERIOUS - Citation 1 - Item 2 -

- a) 4320 S Cotton Ln., Goodyear, AZ: Three employees and multiple subcontractors working on a roof, with an approximate 40 feet fall hazard, utilized a warning line system in which was not flagged at no more than 6-foot intervals with high-visibility material. (29 CFR 1926.502(f)(2)(i)).
- b) 4320 S Cotton Ln., Goodyear, AZ: Three employees and multiple subcontractor employees doing working on a roof, with an approximate 40 feet fall hazard, utilized a warning line system in which was not rigged or supported in such a way that its lowest point (including sag) was not less than 34 inches from the walking/working surface and its highest point no more than 39 inches from the walking/working surface. (29 CFR 1926.502(f)(2)(ii)).
- c) 4320 S Cotton Ln., Goodyear, AZ: Three employees and multiple subcontractor employees working on a roof, with an approximate 40 feet fall hazard, utilized a warning line system in which was not made from rope, wire or chain having a tensile strength of at least 500 pounds. (29 CFR 1926.502(f)(2)(iv)).
- d) 4320 S Cotton Ln., Goodyear, AZ: Three employees and multiple subcontractor employees working on a roof, with an approximate 40 feet fall hazard, utilized a warning line system, that was not attached at each stanchion, in which pulling on one section of the line between stanchions allowed slack being taken up in adjacent sections. (29 CFR 1926.502(f)(2)(v)). Formula Amt. - \$3,000.00 Div. Proposal - \$3,000.00

SERIOUS – Citation 1 - Item 3 – 4320 S Cotton Ln., Goodyear, AZ: Three employees working on a roof at heights greater than 6 feet and exposed to falls were not provided training to recognize the hazards of falling or the procedures to be followed in order to minimize these hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$11,500.00

TOTAL FORMULA AMT. - \$6,000.00

Mr. Warren summarized the citation and proposed penalties and reviewed the photographs.

Commissioner LeMarr and Mr. Knueven discussed the reasons for the presence of two general contractors at the worksite.

Mr. Warren and Mr. Murphy discussed Willmeng Construction's representations that both it and MV Commercial Construction functioned as general contractors on the project..

Mr. Phelan discussed Willmeng Construction and its safety history.

Mr. Burke discussed the presence of personal protective equipment (PPE) on the roof and both companies' progressive approach to safety.

Mr. Porter and Mr. Warren discussed methods for calculating the penalty for Citation 1, Item 1. Chairman Schultz and Mr. Warren discussed better representing the calculation in the report.

Commissioner Orchard and Mr. Murphy discussed the grouping of violations.

Commissioner Krenzel, Mr. Warren and Mr. Murphy discussed the \$7,000 proposed penalty and the reasons it was not applied to MV Commercial Construction.

Chairman Schultz, Vice Chair Hennelly, and Mr. Murphy discussed the contents of a safety meeting held before the incident.

Commissioner Krenzel moved to approve the citation and proposed penalties as presented and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Commissioner Orchard and Mr. Warren discussed outreach concerning skylight hazards. Commissioner Orchard directed Mr. Warren to move forward with the outreach.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2017. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley noted an upcoming Commission visit to Raytheon Missile Systems in Tucson for its 10-year VPP celebration. He discussed additional stakeholder meetings planned for the Tucson trip and plans for the Governor's Transformation Office AMS Science Fair.

Mr. Ashley discussed a Commission meeting visit from the Carpenter's Union on September 21, 2017. He discussed the information that they provided and stated that there were no pending complaints included in the information. He recounted his conversation with the President of the Union in which he provided information concerning filing wage complaints, noted that the Compliance Unit of the Legal Division would be looking into workers' compensation coverage issues, and explained that the Union had raised issues that we offered to facilitate as a referral to the appropriate jurisdiction. He also noted that there has not been a response to our offer to meet directly with Union leadership to discuss their concerns.

Mr. Ashley and Mr. Warren discussed ADOSH citations issued with penalties under \$2,500 and provided reports to the Commission. Commissioner Orchard, Chairman Schultz, and Mr. Warren reviewed ADOSH's recent inspection activity.

# Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through November 2017.

Mr. Ashley discussed Governor Ducey's domestic violence awareness initiatives and "Wear Purple" day, which will take place October 19, 2017.

Mr. Warren noted that the next ADOSH Safety Summit will take place October 19, 2017, in Yuma and that the two-day Phoenix Safety Summit will be held at the Thunderbird School of Management.

# Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:51 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

James Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary